Court No.2

Reserved

Criminal Appeal No. 13 fo 2001

Ali Hasan S/o Ninna ….Appellant

Versus

State …Respondent.

Hon'ble P.C. Verma A.C. J.

Hon'ble Irshad Hussani J.

(Delivered by Hon'ble Irshad Hussain J.)

Appellant Ali Hasan has been convicted and sentenced to imprisonment for life U/s 302 I.P.C. per judgment and order dated 23.12.2000 passed by Ist Additional Sessions Judge, Haridwar.

Certain undisputed facts are that deceased Smt. Sheela was previously married to one Dharam Singh and two children were also born out of their wedlock. Marital relations between them got strained and deceased Smt. Sheela ceased to reside with her husband for the lat about 2 years. Smt. Sheela developed illicit relations with appellant Ali Hasan although, she continued to reside with her mother and brother- informant Ram Chandra (P.W.3) in the town of Jawlapur of district-Haridwar. Smt. Sheela was employed for household work in Vadhera Nursing-Home in Jwalapur.

The prosecution case, as emerges out of the F.I.R. and the evidence, is that appellant Ali Hasan wanted that Smt. Sheela reside with him as his wife, but she was not agreeing to his proposal. Appellant was displeased with her as she refused to reside with him and on many occasions gave her threat of dire consequences. On 19.07.1997 at about 7:30 am.., appellant made Smt. Sheela to stop near P.P. Motor works-shop while she was going to attend her duties at Vadhera Nursing-Home and took her towards a three-wheeler parked in the back of the works-shop and fired shot from his pistol by placing the weapon on her temple and fled-away from there. When Smt. Sheela was cornered by the appellant at the place of occurrence she has raided alarm and before she could be fired at her mother Smt. Sundari (P.W1) brothers-Sher Singh (P.W.2), informant- Ram Chandra (P.W.3) and others of the vicinity have reached there and

witnessed the incident. Informant Ram Chandra thereafter, got prepared a written report, Ext. Ka-1, and lodged the same with the police P.S. Jwalapur on the same day at 9:15 a.m.

On the basis of the F.I.R., case U/s 302 IPC was registered against the appellant and investigation of the case was taken up by SI S.I. Bishnoi (P.W.5). He held inquest on the dead body and sent it for postmortem, which was performed by Dr. R.S. Verma (P.W.4) at 4:15 p.m. the same day i.e. on 19.07.1997. Investigation of the case was transferred to Inspector Jaswant Singh (P.W.9) and ultimately to S.I. Ranvir Singh Ahalawat (P.W.9) who submitted charge sheet, Ext.Ka-11, against the appellant on 15.09.1997.

At the trial in order to bring home guilt to the accused, the prosecution relied upon the evidence of nine witnesses including the eyewitness Smt. Sundari (P.W.1), informant Ram Chandra (P.W.3) and witness of relevant fact Sher Singh (P.W.2). They supported the prosecution version in regard to the time and place of the occurrence as well as the identity of the assailant namely the appellant Ali Hasan. They also gave evidence about the sequence of the events and the manner in which the deceased Smt. Sheela was fatally assaulted by the said appellant.

P.W.4, Dr. R.R. Verma held autopsy on the dead body of Smt. Sheela at 4:15 p.m. on 19.07.1997 and prepared postmortem report, Ext.Ka 2. Following ante mortem injury was detected:-

> "Lacerated wound measuring 18cm. on anterior part of head including forehead, through the brain cavity. Frontal bone of the head and part of frontal lobe of brain and right temporal bone were missing. Both the eyes were also missing."

Blackening and burning in an area of 6cm.x 4cm. on left side of the face just and anterior to the left ear was present. Singing of hair above and anterior to the left ear was also present.

On internal examination besides the above fracture of the skull bones, brain membrane was also found lacerated and both the chambers of the heart were empty. There was about 100 grams of

semi-digested food in the stomach. There was also digested food in the small intestine. There were gases and faecal matter in the large intestine. Urinary bladder was empty. In the opinion of the Medical Officer death occurred as a result of shock and haemorrhage due to ante mortem fire-arm injury, about ½ day ago. Medical Officer opined that fatal ante mortem injury was probably sustained at about 7:30 a.m. on 19.07.1997and that there could be a difference of about three hours on either side in the duration of the death.

P.W.5, S.I. S.P. Vishnoi; P.W.6, S.I. Ranvir Singh Ahalawat and P.W. 9, Inspector Jaswant Singh are the three investigating officer of the case and they proved various steps and formalities completed by them in regard to the investigation of the crime leading to submission of the charge sheet against the appellant. From the place of occurrence Tickly, samples of blood-stained and plain earth were taken vide memos Ext.Ka-4 and Ext. Ka-5 respectively. Ext. Ka-6 is the inquest report and the connected documents are Ext. Ka-7 to Ka-9. Site-plan of the place of occurrence is Ext. Ka-3.

P.W.7, H.C. Madan Pal Singh proved Chik F.I.R., Ext. Ka-1, and copy of G.D. report No. 16 of 19.07.1997, Ext. Ka-7 regarding registration of the case. PW 8, Constable Vikram Singh is one of the police personal who took the dead body of the deceased for postmortem.

The appellant had pleaded not guilty and in his statement U/s 313 of Cr.P.C. gave out that Smt. Sheela had entered into wedlock with him and a daughter was born out of their union. Smt. Sheela had a son from her first husband Dharam Singh and she had been residing with him out of her own consent and free will. According to him she had not stayed with her mother for the last about 6 or 7 years and that the mother and brothers of the deceased were displeased with him on account of his marrying Smt. Sheela and due to the enimity falsely implicated him in this case. He also reiterated that he was having cordial relations with Smt. Sheela and that even on 24.06.1997 when he got burnt injuries in an accident, his wife Smt. Sheela got him

Admitted in the hospital at Haridwar and she nursed him during that period. In defence, two witnesses Rafal Singh (D.W.1) and Dr. K.C. evidence to prove joint affidavit of the appellant and Smt. Sheela, which was prepared on 19.04.1997, in which Smt. Sheela admitted that she had entered onto wedlock with appellant Ali Hasan. The affidavit, Ext. Kha-1, is on the record. D.W. 2, proved injury report Ext. Kha-2 dated 24.06.1997 verifying the fact that appellant Ali Hasan was admitted in hospital at Haridwar for treatment of burn injuries by Smt. Sheela shown as wife of the appellant.

It need to be mentioned here that the record of the Sessions Trial was lost during transmission to the High Court and the same was reconstructed under the orders of the Court. The statement U/s 313 Cr.P.C. of the appellant and statement of both the defence witnesses, however, could not be reconstructed but in the judgment of the Trial Court comprehensive reference of the statements is available. At the bar, learned counsel for the appellant and the learned A.G.A. did not dispute the veracity of the same and it had been taken to be reconstructed record of the case.

Heard Sri Nanak Gupta learned counsel for the appellant and learned A.G.A. and have carefully considered the material and evidence on record.

It is indubitable that the death of Smt. Sheela was homicidal and whosoever caused her fatal fire-arm injury had intended to commit her murder. Learned counsel for the appellant has conceded to this factual aspect of the case. Considering the unequivocal statements of the witnesses of the fact and also the evidence of the Investigating Officer who even seized a “tickly” and blood form the place of the occurrence, the learned counsel for the appellant did not challenge the finding of the learned Sessions Judge that the occurrence took place near P.P. Motor works-shop in the town of Jwalapur. The place had been shown in the site plan, Ext. Ka-3, correctness of which was also not disputed. Learned counsel for the appellant, however, argued that the findings of the Trial Court in regard to the time of the occurrence as

well as the identity of the assailant of the victim Smt. Sheela-deceased are incorrect as these are based on improper and out of the context appreciation of the evidence of P.W.1, P.W.2 and P.W.3, the witnesses of the fact as well as P.W.4, the Medical Officer who performed postmortem of the dead body of the deceased.

As regards the time of occurrence is concerned, all the three eye-witnesses of the fact P.W.1, P.W.2 and P.W.3 have stated in one voice that the occurrence took place at about 7:30 a.m. on 19.07.1997 when Smt. Sheela was going to attend to her duties in Vadhera Nursing Home. The witnesses have also corroborated the fact that Smt. Sheela was employed to take up menial work in the kitchen of the Nursing Home. Leaving the house to attend such type of work at about 7:30 a.m. was quite natural and in the peculiar circumstances of the case there is no substance in the argument of the learned counsel for the appellant that Smt. Sheela has had no occasion to be there at the place of the occurrence in the morning hours. To discredit the claim of the prosecution in regard to the time of the occurrence, attention was drawn to the medical evidence and it was submitted that presence of semi-digest food in the stomach and digested food in the intestine and further presence of gases an faecal matter in the large intestine of the deceased rule out the possibility of death of the said victim taken place at about 7:30 a.m. on the ill-fated day. It need to be pointed out that the Medical Officer, P.W.4 had probablised that the death had occurred at about 7:30 a.m. on 19.07.1997 and mere probability that there may be difference of about 3 hours on either side in the duration of the death cannot safely be taken to accept the argument that the incident had taken place much earlier in the dark hours of the night. It is not un-common that the persons who are engaged in menial jobs in houses normally got up early to attend their work and it was quite probable that Smt. Sheela had taken some eatable some time before leaving for her job. It is of significance that PW1 Sundari testified that Smt. Sheela woke up at about 6:00 in the morning that day, got her son ready for school and had taken tea and water in the house. Taking tea and water would not exclude

consumption of any eatable at that time and, therefore, presence of semi-digested food in the stomach and in the intestine was a normal feature. Further, it is not necessary that Smt. Sheela had gone to ease herself on that day before leaving her house and, therefore, presence of gases and faecal matter in the large intestine would not indicate that her death took place much before the time shown by the prosecution. Moreover, there is direct evidence of P.W.1, P.W.2 and P.W.3 about the time of the occurrence as given by the prosecution and also fully supported by the Medical Officer and, therefore, there is absolutely no cause for entertaining any doubt in their evidence that the occurrence took place at about 7:30 a.m. on 19.07.1997. Here it shall not be out of place to mention that it is well settled that the state of the contents of the stomach found at the time of the medical examination is not a safe guide for determining the time of the occurrence, because that would be a matter of speculation in the absence of reliable evidence on the question as when the deceased ate her last meal and what that meal consisted of. Likewise the presence of faecal matter in the intestines is not conclusive for determining the time of the occurrence and it is well settled that when there is direct evidence about the time of occurrence, it is not open to the Court to speculate about the time of occurrence by the presence of faecal matter in the intestines. On these observations we are fortified by the recent decision of the Apex Court in the case of State of U.P. Vs. Rasheed and others; AIR 2003 Supreme Court 1243 (para 16).

For the above reason and discussion the evidence on record fully establish that the occurrence took place at about 7:30 a.m. on 19.07.1997 and the conclusion to this effect of the learned Sessions Judge is based on proper appraisal of the evidence and the settled legal principles.

The learned counsel for the appellant also adversely committed upon the finding of the learned Sessions Judge that appellant Ali Hasan has caused the fatal fire-arm injury to the victim Smt. Sheela and was responsible for her murder. The bring home his

point of view learned counsel argued that the learned Trial Courts fell in error in accepting the evidence of P.W.1, Smt. Sundari and P.W.2, Sher Singh, although both of them being close relations of the victim were highly interested persons and have, therefore, deposed falsely in implication the appellant on account of enmity. It is well settled that the close relation who is a natural witness cannot be regarded as an interested witness. At the most the evidence of relation witness need to be scrutinized with care and caution before accepting the same as reliable and it is not the law that the evidence of close relative could not be taken to support the prosecution versions. P.W. 1 Smt. Sundari, the mother of the victim, also left the house simultaneously with the victim and she was following her daughter when the appellant stopped the victim near P.P. Motor works-shop and by taking her towards a parked tempo fired a pistol shot on her temple form a close range. P.W.1 claimed that she had reached at the place of occurrence on the alarm raised by the deceased and as she was about to reach at the place of occurrence the appellant fired a shot form pistol which hit the victim on the temple who instantaneously died at the spot. Since the witness had left the house and followed her daughter, she was most natural witness of the occurrence and there is absolutely nothing in her cross-examination, which may in any way tell upon her credibility and trustworthiness. Some minor contradiction have crept in her statement such as the threat given by the appellant to the son of the victim who was being taken to the school by the victim at that time and the claim to this effect not finding place in the statement recorded by the Investigating Officer and other similar minor events at the time of the occurrence and these could not at all be taken to brand the witness as untruthful and, therefore, the learned Sessions Judge was justified in placing implicit reliance on her evidence that the appellant had fatally assaulted the victim by firing shot from pistol in the incident. In other words there is nothing as may support the argument of the learned counsel for the appellant that the evidence of this witness was shaky and discrepant and was, therefore, not reliable in regard to the identity of the assailants.

P.W.2, Sher Singh has also supported the prosecution version and gave out that he had seen the appellant and his sister Smt. Sheela together on the three wheeler at the scene of the occurrence when he was taking his daughter to school and after about 10 minutes when he returned after leaving her daughter in the school he saw the accused standing there with pistol aiming his mother and he found that his sister Smt. Sheela was lying dead on sustaining fire-arm injury at the hands of the appellant. The evidence of the witness is of the relevant fact and, since he had also left the house and was going by the same way to drop his daughter he is also a natural witness of the occurrence as he had seen the appellant at the scene of the occurrence and running away form there leaving his sister dead at that place.

Learned counsel for the appellant argued that this witness has not seen the actual occurrence and, therefore, his evidence could not have been taken to support the prosecution version. Even, if he had not seen the appellant firing shot from pistol on the victim, he had seen the appellant and the victim together few minutes before the actual occurrence and he had also sent he appellant running-away from there with his pistol and his sister Smt. Sheela was lying dead there on receiving fire-arm injury in the head. The evidence of relevant fact, thus, amply supports the prosecution version and evidence of P.W.1, and who in fact, had seen the actual occurrence and fully proved the prosecution version.

P.W.3, Ram Chandra, although, stated that the appellant fired shot from pistol in his presence hitting his sister Smt. Sheela, but he was not treated to be eye-witness by learned Sessions Judge in view of the fact that P.W. 1, gave out that this witness came there lateron and was told by her all about the occurrence. This witness, on the information of P.W.1, prepared written report Ext. Ka-1 and filed it at the police station.

In view of the reasoning as given by the learned Sessions Judge, there remain no need to dilate upon the evidence of this witness. However, it is evident that the evidence of P.W.1, Smt. Sundari, the mother of the victim who is the natural witness is wholly

reliable and the evidence of P.W.2 of the relevant fact further supports the prosecution version in regard to the identity of the assailant.

Learned counsel for the appellant drew attention to the F.I.R., Ext. Ka-1, and submitted that presence of the other persons of the vicinity was shown by the informant at the scene of the occurrence but none of them was named and examined in the evidence and that this aspect of the matter raise grave doubt in the claim of the prosecution and reliability of the evidence adduced in the case. None of the witnesses examined have named any other person, as being the eye-witness and, therefore reference of other persons in the F.I.R. cannot be taken to submit that any prosecution eye-witness of the occurrence had been withheld by the prosecution. Considering this, the submission of the learned counsel carry no conviction and it cannot be accepted that the evidence of the prosecution could not have been relied upon in the absence of the presence of the eye-witness of the vicinity of place of occurrence.

It was lastly argued that the F.I.R. of the case was lodged with considerable delay and this aspect, itself, is sufficient to doubt genuinous of the F.I.R. The occurrence took place at about 7:30 a.m.; whereas the F.I.R. was lodged at 9:15 a.m., after at about 1 hour & 45 minutes. The distance between the place of occurrence and the police station is about 1-1/2 k.m. and considering that the F.I.R. was lodged after about 1 hours & 45 minutes, it cannot be said that the delay was considerable or deliberate. After such an occurrence, the close relations get disturbed and fail to manage themselves to have a report of the incident prepared at once and lodge the same at the police station with utmost promptitude. There being no deliberate delay in lodging the F.I.R. the same, therefore, cannot be viewed with suspicion and disbelieved. In other words, the genuinous of the F.I.R. cannot be doubted and in fact, the same also corroborate the prosecution version and the evidence as adduced in the case by the prosecution.

It is not disputed that the appellant and Smt. Sheela were maintaining illicit relations, as they have not entered into a valid

wedlock. It was due to this relationship that Smt. Sheela got the appellant admitted in district hospital Haridwar for treatment of burn injury as evidenced by DW 2 Dr. K.C. Pant and injury report Ext. Kha-2., but this piece of evidence would not be taken to support the defence claim that the appellant thereafter has had no occasion to commit the murder of his paramour Smt. Sheela-deceased. It has come in the evidence of the witnesses that Smt. Sheela was not permanently residing with the appellant to his displeasure and in the past appellant had given threat of dire consequences to the victim for this reason. The appellant, therefore, had motive to commit the murder of Smt. Sheela and this aspect of he matter also stands established form the facts and circumstances of the case.

For the above reasons and discussion we are of the view that the case against the appellant Ali Hasan stands proved beyond reasonable doubt that the appellant had murdered Smt. Sheela and he had rightly been guilty and convicted for an offence punishable U/s 302 IPC. There being no force in this appeal we dismiss the same and U/s 302 IPC as awarded by the S3essions Judge, Haridwar per judgment and order dated 23.12.2000. The appellant is in jail. He shall serve out the sentence as awarded against him.

Let the record of the case be sent back to the Court concerned for compliance of the order.

(Irshad Hussain J.) **(A.C. J. Verma A.C.J.)**

July 14 ,2003

NCM: